

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: <u>February 3, 2016</u>
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JOSE CARMEN MARTINEZ COSME, *et al.*, :

Plaintiffs, :

v. :

ARELLS CREATIONS USA CORPORATION, :
et al., :Defendants. :
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15 Civ. 5032 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

For the reasons stated in open court on December 16, 2015, Plaintiffs' application for default judgement is GRANTED.

On January 29, 2016, Plaintiffs submitted affidavits and tables purporting to show how much each Plaintiff is owed. (Dkt. #23). The Court believes that the Plaintiffs' affidavits (Dkt. #23, Ex. 2-5) are sufficient to support the calculations in Plaintiffs' tables (Dkt. #23, Ex. 6-9), with two exceptions:

First, the Court believes that the tables overstate the amount of money that Plaintiffs are owed for the pay period that began on August 4, 2014, and ended on August 31, 2014. During this pay period, Irma Flores Franco and Eleazar Ramirez worked approximately 56 hours per week, and earned \$500 per week (Dkt. #23, Ex. 2-3). Consequently, Ms. Flores Franco and Mr. Ramirez's regular rate of pay during this time period was \$8.93 per hour, and their overtime rate was \$13.39 per hour. *See Klein v. Torrey Point Grp., LLC*,

979 F. Supp. 2d 417, 434-36 (S.D.N.Y. 2013) (explaining how to calculate the regular rate of pay and overtime rate for employees who were compensated at a flat weekly rate). Thus, Ms. Flores Franco and Mr. Ramirez are owed \$71.43 per week in unpaid overtime, *see id.*, plus state and federal liquidated damages. In other words, Ms. Flores Franco and Mr. Ramirez are owed a total of \$857.14 for this time period (rather than the \$3,600 figure reflected in their tables).

Similarly, Martha Garcia and Jose Carmen Martinez Cosme stated that, between August 4, 2014, and August 31, 2014, they worked approximately 57 hours per week and earned \$500 per week. (Dkt. #23, Ex. 4-5). Thus, the Court believes that Ms. Garcia and Mr. Martinez Cosme's regular rate of pay during this time period was \$8.77 per hour, and their overtime rate was \$13.15 per hour. *See Klein*, 979 F. Supp. 2d at 434-36. As a result, Ms. Garcia and Mr. Martinez Cosme are owed \$74.56 per week in unpaid overtime, *see id.*, plus state and federal liquidated damages. In other words, Ms. Garcia and Mr. Martinez Cosme are owed a total of \$894.74 for the pay period spanning August 4, 2014 to August 31, 2014 (rather than the \$3,825 figure reflected in their tables).

Second, the Court believes that Mr. Martinez Cosme's table overstates the amount of money that he is owed for the pay period that began on March 2, 2015, and ended on March 28, 2015. During this period, Mr. Martinez Cosme worked approximately 43 hours per week, and earned \$362.50 per week. (Dkt. #23, Ex. 5). Thus, the Court believes that Mr. Martinez Cosme's regular rate of

pay during this time period was \$8.43 per hour and his overtime rate was \$12.65 per hour. *See Klein*, 979 F. Supp. 2d at 434-36. As a result, Mr. Martinez Cosme is owed \$12.65 per week in unpaid overtime, *see id.*, plus state and federal liquidated damages. In other words, Mr. Martinez Cosme is owed a total of \$151.74 for the pay period spanning March 2, 2015 to March 28, 2015 (rather than the \$489.38 figure reflected in his table).

In light of these adjustments, the Court will also reduce the amount of interest that each Plaintiff receives under the New York Labor Law. Because Plaintiffs' counsel declined the opportunity to recalculate the amount of interest that each Plaintiff is owed, the Court will reduce each Plaintiff's interest by \$100.

Finally, the Court notes that Plaintiffs' tables may understate the amount of unpaid overtime and liquidated damages that Plaintiffs are owed under the Fair Labor Standards Act because the tables use the federal minimum wage, rather than the state minimum wage, in their federal overtime calculations. *See, e.g.*, 29 C.F.R. § 778.5; *Gurung v. Malhotra*, 851 F. Supp. 2d 583, 592 (S.D.N.Y. 2012). However, this Court will not adjust Plaintiffs' tables to give them more money than they have requested.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED, that a default is entered against the Defendants, jointly and severally, as follows:

That Plaintiff Irma Franco Flores be awarded \$28,736.08;

That Plaintiff Eleazar Ramirez be awarded \$21,078.66;

That Plaintiff Martha Garcia be awarded \$25,721.79;

That Plaintiff Jose Carmen Martinez Cosme be awarded \$ 34,040.59;

That Plaintiffs be awarded \$6,600.00 in attorneys' fees;

And that Plaintiffs be awarded \$741.00 in costs.

The Clerk of Court is directed to terminate all pending motions, adjourn all remaining dates, and close this case.

SO ORDERED.

Dated: February 3, 2016
New York, New York

A handwritten signature in blue ink, reading "Katherine Polk Failla".

KATHERINE POLK FAILLA
United States District Judge